

Farmland and Open Space Preservation Purchase of Development Rights Program Frequently Asked Questions

Why should a community consider farmland preservation programs?

Farmland preservation is important in Van Buren because agriculture is a major industry, and remains the most prominent land use. According to the 2002 Agriculture Census, Van Buren County Ranks (VBC) 1st in the state for all berries and 2nd for harvested vegetable production. However, in only 5 years from 1997 to 2002, the county lost 5% of its farms (from 1,217 to 1,160), and total farming acreage went from 189,432 in 1997 to 176,260 in 2002, for a 7% loss. In addition, the market value of production decreased 8%, from \$104,868,000 in 1997 to \$96,724,000 in 2002. In VBC, losing farmland equals a loss of employment and income for many Van Buren families.

Preservation is also important because climate, soils, and terrain suitable for farming are an irreplaceable resource. Once land is developed, it's gone. Enrolling land in a preservation program creates large blocks of farmland and open space, therefore minimizing land use conflicts and providing a buffer to interior farming operations.

Land preservation can also decrease road congestion, overcrowding of the land, and sprawl. This, in turn, increases service efficiency and saves municipalities and taxpayers money by not extending public utilities and other infrastructure into the far reaches of the township. Preservation programs keep development close to city centers, where it belongs.

Finally, farmland and open space are associated with our identity in this county and help to create the desirable character of our communities. When we lose rural character through development, we lose our identity and potentially create loss of other industries, such as food processing and tourism, as visitors no longer find unique features in our county.

How does Purchase of Development Rights (PDR) compare to other policy mechanisms to protect farmland, such as zoning, building moratoria, or tax breaks for agriculture?

PDR is intended to be only one method of preservation, to be used in conjunction with zoning and tax incentives. Using a variety of techniques helps communities to effectively plan patterns of land use and allow for agriculture, open space, and residential and commercial/industrial developments. The major advantage of PDR is that it protects the enrolled property forever.

What is the cost to the township for participation in the program?

There is **no** fee for participating in the PDR program. The only costs involved are those associated with updating the master plan to include a land preservation element. However, landowners selected to participate in the program will need to provide some matching funds, and townships are welcome to assist with this funding. In fact, landowners whose townships provide local match will earn more points than those who do not.

Should township surveys inquiring about interest in PDR be sent only to farmers?

No, everyone should be included. Community support for the program is essential to its success. Furthermore, it is possible for townships and community organizations to set up special funds or even pass a millage to assist landowners with matching funds in order to enroll their property. Farmland and open space preservation should be a broader community effort that educates the public and encourages forward thinking and better land-use patterns as a whole.

Should farmer buy-in or interest in PDR be the key consideration for township planners in identifying preservation areas on the Future Land Use Plan?

Farmer and landowner buy-in is certainly an important piece for adopting a PDR program. However, decisions that identify a preservation area should be based on factors that take into account the larger picture of the township(s). Setting aside a preservation area also means setting aside areas to develop. Public meetings should be held, and townships should consider factors like soil, climate, and topographic conditions; other natural features such as wetlands, lakes, and rivers; interstate and highway access; other infrastructure, including public utilities; current densities, land uses, and growth patterns; and current and future zoning needs.

If development rights are sold to the county, does the county now own the right to develop my property in the future in any way chosen, e.g., convert it to a park?

No. The PDR program does **not** take away private property rights. The program pays fair market value to landowners who voluntarily offer to sell the right to develop their land and allows landowners to cash out the development value of the land without selling the land. This does not mean that landowners give others the right to use their land. Upon entering land in the program, landowners will sign a non-development agreement so that the “government” cannot develop the property either.

According to *Section 8.01 - Provisions of the Easement*, “the easement encumbering the development rights of farmland property shall...indicate that the development rights are to be held in trust by the public.”

How Does Selling Development Rights Protect Farmland?

If a landowner sells his/her development rights to the County, then the County owns the right to develop the land. However, the County is not able to exercise the right because the property owner still owns the land itself. The only way the land can ever be developed is if the County sells the development rights back to the person who owns the land. Because the intent of the VBC Farmland and Open Space Preservation Ordinance (FOSPO) is to permanently preserve farmland, it is very difficult to ever develop land once the development rights are sold.

Is the PDR process reversible?

While very difficult, the VBC FOSPO allows for the removal of land from the program, under certain circumstances. Please note that it is the policy of VBC to seek like-kind replacement for lands removed from the program.

The FOSPO allows county-owned interests in farmland and other eligible land to be exchanged for property interests in farmland land or other eligible land on an equivalent appraised value basis, upon affirmative findings that:

- The property subject to the easement is no longer consistent with the farmland and open space element of the comprehensive plan of the participating local government and Van Buren County.
- The planning commissions of participating local units of government and the county have taken such action to amend the farmland and open space element of the comprehensive plans of the participating local government and Van Buren County, removing the subject land from the protection/preservation area designation.
- The property owner has requested to repurchase the development rights,
- The property owner and the LPB have reached an agreement defining compensation due the County for the repurchase of the development rights based on the appreciated development rights value or an amount of like kind replacement farmland or other eligible land of equal value to replace the amount of land for which the development rights are being repurchased. If the property interest exchanged is not exactly equal in appraised value, cash payments may be made to provide net equivalent value for the repurchase or exchange. Such cash payments are to be used to purchase other eligible farmland through the program.

See *Section 3.05 - Repurchase or Exchange of Property Interest in Development Rights Easements* of the ordinance for more information.

If property is qualified for PDR with grape or corn production for example, must farmer guarantee this won't change?

No. Applications are scored based upon current soil conditions and crops.

If a fruit farmer has a problem with disease in his trees and he is an area that has been designated farm preservation and he decides he is going to switch to a dairy farm. At this point he has to build new buildings, is this considered development?

From the State's perspective, agriculture is agriculture. It is understood that agriculture will look different 50 years from now than it does today, and the state will allow for this flexibility. As long as the farmer notifies VBC, in writing, of the change, the farmer can build new buildings as long as they are for the purposes of the farm (not houses or storage barns, etc).

If a farmer's barn burns down and he wants to build a bigger one, can he? Or, is this considered development?

According to *Section 8.01 - Provisions of the Easement*, landowners may maintain, renovate, add to, or replace existing structures.

If a landowner wants to ensure that a family member can build another home on this property once the land is enrolled, is this considered development?

If a landowner would like to secure an additional site in order to construct another home, this property should be marked off ahead of time. A legal description of the portion of property that will be excluded from the PDR application should be provided with the application. A professional survey is not required, but may be needed (at the landowner's expense) if the property corners are not readily identifiable.

Can mineral rights be exercised by the owner after property is entered into the PDR program?

In the VBC FOSPO, development rights are defined as: An interest in land that includes the right to construct a building or structure, to improve land for development, to divide a parcel for development, or to extract minerals incidental to a permitted use or a special land use or specific development rights, set forth in a development rights easement in accordance with the provisions of this ordinance.

According to *Section 8.01 - Provisions of the Easement*, certain uses of the land are restricted so that the existing agricultural use will be preserved. Under this section, excavation of topsoil, sand, gravel, rock, minerals or other materials that significantly impairs the use of the land as prescribed in the ordinance is prohibited.

What percentage of my income must be derived from farming to make my property eligible for the PDR program?

Your eligibility to participate in this program is based on your land, not your income. The soil, types of crops grown, other natural features on the property, road frontage, development pressure, etc. are examples of criteria that will be used to score your land. A full version of the scoring system is available by contacting Kelly Getman-Dissette at 269.657.8200, ext. 1592 and is available at the following URL: <http://www.vbco.org/government576215.asp>

How is the price of the development rights determined?

The development rights value is determined by state certified appraiser who determines the value of the property with and without the restrictions of the easement. The difference is the value of your development rights. This price will vary based on full market value of the parcel. Simply put:

full market value of land – agricultural value of land = value of development rights

Is payment for development rights offered in installments, or in a lump sum?

This depends on the preference of the landowner. However, because payment received for development rights is a capital gains item, it may be preferable to accept installment payments. Landowners are encouraged to consult with their attorneys, accountants, and/or estate managers to determine the best option based on their personal situation.

What happens to my taxes?

Once land is enrolled in the program, property taxes and inheritance taxes are based only on the residual agricultural value of the land rather than the full developmental value.

Will my property be visited as a part of the application process?

Visits may take place, subject to agreement with the landowner. Advance notification will be given.

Will the property be monitored after the easement is in place? By whom?

Yes, by local conservancy staff, MSUE staff, and the LPB.

Who will run this program for the County?

The LPB, MSUE staff, and local conservancy staff.

What about property that is not 51% (or more) active agriculture?

The VBC FOSPO allows for the eventual preservation of this property. However, the current state program requires property to be at least 51% in active agriculture in order to receive grant funding. However, land that includes other natural features (i.e. wetlands, dunes, rivers, endangered species) will receive additional consideration.

If my property is enrolled in PA 116 or CRP, and I have not been actively engaged in agricultural activity, is my property still eligible for PDR?

At the current time, the Michigan Department of Agriculture requires that 51% of the property must be in active agriculture to be eligible for grant funding. However, the Van Buren County Farmland and Open Space Preservation Ordinance is a broader program, and such properties may be eligible for purchase of development rights at a later date.

Does enrolled land affect adjacent rights to develop?

Scenario: A township has designated area for preservation, and Farmer #1 sells his development rights. Farmer #2 (his next door neighbor) decides she needs to sell her farm, but can't get enough money selling it as a farm to pay off her debt. Therefore, she decides she needs to sell to a developer. Can she?

The answer to this question lies not within the county land preservation ordinance but with the local unit of government. What are the local zoning regulations? If a landowner wishes to use his/her land for a purpose not currently permitted by the zoning ordinance, the landowner must follow up with the local unit, perhaps by applying to rezone the property.

How does PDR affect underlying zoning and the rights to develop land in accordance with these zoning requirements?

PDR is a land preservation tool. It is not, in itself, zoning. Local units of government adopt a zoning ordinance, and any development is required to comply with the established zoning regulations, or have been granted a variance. Landowners who sell their development rights, or participate in PDR, voluntarily agree to further restrict development on their property. Specifically, any additional development must be related to farming operations, and once the development rights are purchased, that land is protected no matter what the zoning map says.